

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

JOSE CATO,

Complainant,

and

STANDARD CLUB OF CHICAGO,

Respondent.

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Charge No.: 2007CN2049

EEOC No.: N/A

ALS No.: 08-0242

RECOMMENDED ORDER AND DECISION

On June 19, 2008, the Illinois Department of Human Rights (IDHR) filed a complaint on behalf of Complainant, Jose Cato. That complaint alleged that Respondent, Standard Club of Chicago, discriminated against Complainant on the basis of his sexual orientation. The complaint further alleged that Respondent unlawfully retaliated against Complainant when he opposed unlawful discrimination.

This matter now comes on to be heard on my own motion, *sua sponte*, to dismiss. Neither party has appeared for the last two scheduled hearings, and it appears the matter has been settled.

The IDHR is an additional statutory agency that has issued state actions in this matter. Therefore, the IDHR is named herein as an additional party of record.

FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1. On May 19, 2009, the parties and their counsel participated in a settlement conference held at the Commission's Chicago office.
2. At that settlement conference, the parties reached a settlement in principle, but they needed time to reduce the agreement to writing.

3. In an order entered on May 19, 2009, this matter was set for status on July 7, 2009 at 10:00 a.m. The order provided that the parties would not need to appear for the status hearing if a motion for voluntary dismissal were filed prior to that date. The attorneys for both parties were given copies of the order.

4. Neither party appeared for the July 7 status hearing. No motion for voluntary dismissal had been filed.

5. On August 19, 2009, an order was entered setting a new status hearing for September 17, 2009 at 2:00 p.m. The order provided that the date would be stricken if a motion for voluntary dismissal were filed prior to the hearing date. The order was mailed to counsel for both parties.

6. Neither party appeared for the September 17 status hearing. No motion for voluntary dismissal had been filed.

7. On August 25, 2009, the Commission's Chicago office received a hand-written post-it note, apparently from Complainant's counsel, that stated as follows: "THE MATTER HAS BEEN SETTLED. NO TIME OR STAFF TO DO ANY MORE. FRANK OCHAL (UNNECESSARY WORK)." There was no certificate of service accompanying the note.

8. On August 27, 2009, Elizabeth Rios of the Commission's staff sent a letter to Complainant's counsel advising him that the Commission's procedural rules prohibit filing documents without providing a certificate of service. That letter was also sent to Respondent's counsel. Included in both copies of the letter were copies of the post-it note, a certificate of service form, and a copy of the Commission's form motion for voluntary dismissal.

9. Neither party responded to Ms. Rios's August 27 letter.

CONCLUSIONS OF LAW

1. The actions of Complainant's counsel have unnecessarily prolonged the proceedings in this matter.

2. In light of the actions of Complainant's counsel, this matter should be dismissed in its entirety, with prejudice.

DISCUSSION

On May 19, 2009, the parties and their counsel participated in a settlement conference held at the Commission's Chicago office. At that settlement conference, the parties reached a settlement in principle, but they needed time to reduce the agreement to writing. In an order entered that day, this matter was set for status on July 7, 2009 at 10:00 a.m. The order provided that the parties would not need to appear for the status hearing if a motion for voluntary dismissal were filed prior to that date. The attorneys for both parties were given copies of the order.

On August 19, 2009, an order was entered setting a new status hearing for September 17, 2009 at 2:00 p.m. Again, the order provided that the date would be stricken if a motion for voluntary dismissal were filed prior to the hearing date. The order was mailed to counsel for both parties. Neither party appeared for the September 17 status hearing. No motion for voluntary dismissal had been filed.

Despite clear instructions, neither party has appeared for any purpose since the May 19 settlement conference. The only communication from either side came from Complainant's attorney. On August 25, 2009, the Commission's Chicago office received a hand-written post-it note, apparently from Complainant's counsel, that stated as follows: "THE MATTER HAS BEEN SETTLED. NO TIME OR STAFF TO DO ANY MORE. FRANK OCHAL (UNNECESSARY WORK)."

There was no certificate of service accompanying the note. As a result, on August 27, 2009, Elizabeth Rios of the Commission's staff sent a letter to Complainant's counsel advising him that the Commission's procedural rules prohibit filing documents without providing a certificate of service. That letter was also sent to Respondent's counsel. Included in both

copies of the letter were copies of the post-it note, a certificate of service form, and a copy of the Commission's form motion for voluntary dismissal. Neither party responded to Ms. Rios's August 27 letter.

From statements made at the settlement conference and the failure to appear for subsequently scheduled status hearings, it appears that the parties have settled the matter and no longer care to involve the Commission. As a result, it is appropriate to dismiss this case with prejudice. Nonetheless, there is an additional issue to discuss.

Frank Ochal, Complainant's attorney, could have concluded this case much earlier simply by filing a motion for voluntary dismissal and mailing it to the interested parties. A form motion was mailed to him. It could have been filled out by hand, and it required only a caption, a signature, and his name and address. Instead, he sent a hand-written post-it note in which he suggested that compliance with proper procedures was "unnecessary work." He compounded that lack of respect to the Commission by failing to send a certificate of service to indicate that he had notified the other side of his contact with this agency. That stunning lack of professionalism has prolonged the proceedings in this matter and resulted in the otherwise "unnecessary work" of preparing this recommended order.

RECOMMENDATION

Based upon the foregoing, it appears that the parties have resolved this matter. Accordingly, it is recommended that the complaint in this matter, and the underlying charge, be dismissed in their entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: April 7, 2010